

Federal Meat Inspectors: USDA Policies on Mad Cow Threaten Public Health

January 26, 2005

Secretary Mike Johanns
United States Department of Agriculture
Room 200-A, Whitten Building
12th Street and Jefferson Drive, S.W.
Washington, DC 20250

Dear Secretary Johanns,

We are writing to express our concern about apparent retaliation against Charles S. Painter, Chairman of the National Joint **Council of Food Inspection Locals**, who recently made disclosures covered by the Whistleblower Protection Act about the agency's rules on bovine spongiform encephalopathy. Further, we are concerned about the agency's decision to involve seven more union officials in the investigation of Mr. Painter, rather than use easily accessible agency records to answer their questions about particular plants where such problems may be occurring.

On December 8, 2004, Mr. Painter sent a letter, on behalf of the NJC, to Mr. William Smith, Assistant Administrator for Field Operations of the USDA's Food Safety Inspection Service. The letter presented concerns about the removal of specified risk materials (SRMs) from cattle and FSIS inspectors' ability to enforce the export requirements for products destined for Mexico. Specifically, the letter states that members of the union had reported that:

1. Plant employees are **not correctly identifying** and marking all heads and carcasses of animals over 30 months old. Therefore, plant employees and government personnel further down the line are **unaware that numerous parts should be removed** as SRMs and these **high risk materials are entering the food supply**.

2. On-line inspectors are not authorized to take actions when they see plant employees sending products that do not meet export requirements past the point on the line where they can be identified and removed.

In his letter, Mr. Painter did not identify specific plants where reports had come from, because he did not know them. In fact, he chose not to learn the identity of the plants so that he would not be forced to disclose this information, which could allow the agency to take retaliatory action against the inspectors assigned to these plants.

Rather than dealing with the serious problems identified in Mr. Painter's letter, the agency instead directed extraordinary resources to attacking the NCJ Chairman and other regional union presidents. Specifically, on December 23, an FSIS compliance officer appeared unannounced at the home of Mr. Painter, while he was on annual leave, to question him about the allegations in the letter. Mr. Painter explained that the intent of his letter was to point out problems with overall FSIS policy. In fact, his letter suggests why the reports from several plants are likely just the tip of the iceberg:

"We are concerned, however, that since on-line Inspectors are not instructed to perform this examination, most will not do so, therefore most age determinations will not be reviewed by the government. Additionally, since so many on-line Inspectors are recent hires, these new employees will be even less likely to perform this check. Inevitably, **the majority of 30+ animals missed by plant employees will continue down the line and SRMs will enter the food supply.**"

Nevertheless, just a few days later, on December 28, 2004, Mr. Painter received a notice from FSIS that he was under formal investigation for failing to disclose the plants and inspectors involved in the incidents described in his letter. On January 6, 2005, Mr. Painter endured a three hour interrogation in which he repeatedly stated that he did not know the identities of particular plants the agency should investigate in addressing the policy failure addressed in his letter. On January 7, 2005, seven regional council presidents for the NJC were also ordered to appear in Washington, D.C. on January 11, 2005, for an interview.

This case presents a classic example of the value and necessity of whistleblowers. The **decision by FSIS officials to attack the messenger and ignore the message** not only fails agency employees who are merely trying to do their job, but also fails consumers who depend on the agency to adequately safeguard the meat they feed their families.

Additionally, it is important to note that the NJC raised their concerns in hopes that the agency would address an inadequate policy which applies to all cattle slaughter plants. But if in response to this concern about policy, the agency felt compelled to investigate the performance of individual plants, it has methods for doing so that do not require harassing union officials or other employees. The agency's options include searching their database of non-compliance reports or contacting district offices to inquire about plant performance on these regulations, methods similar to those used to fulfill FOIA requests and other routine evaluations. Rather than pursue these methods, the agency chose to spend time and money pursuing retaliatory investigations of union officials. We are also concerned that, to date, the agency has not initiated any efforts to address the overall **policy that leaves plant employees in charge of determining the age of cattle**, and instead has chosen to make this an issue of the performance at specific plants.

Your agency showed disrespect for its own inspectors and violated the public trust when you repeatedly used the media to imply that the problems described in Mr. Painter's letter were unfounded.[1] Further, by opening a formal investigation of Mr. Painter, the agency is attempting to restrict the rights of concerned federal employees and citizens to freely express concerns to the public.

When Congress reauthorized the Whistleblower Protection Act in 1994, it recognized whistleblowers as the "eyewitnesses in the front lines as public policy is implemented" and thus mandated that agencies create a climate where whistleblowers' disclosures are encouraged and acted upon. Contrary to this mandate, Mr. Painter is being illegally investigated and discredited in the press.

The concerns outlined by Mr. Painter's letter are of vital interest to consumers, especially in light of recent announcements of the discovery of **two more cases of BSE in Canada** and the agency's intent to re-establish **imports of live animals from Canada**. The public has the right to know that the reality inside meat plants is not the same as the picture being painted for the media by USDA officials in Washington, D.C.

When FSIS inspectors feel they have no option left other than going public with their concerns, that should serve as a **wakeup call for the agency to recommit itself to protecting public health**, not as an excuse to retaliate against its own employees. We urge you to reconsider the decision to initiate a formal misconduct investigation of Mr. Painter, and instead, to direct agency resources to taking steps necessary to establish an environment inside FSIS that encourages employees to disclose issues of waste, fraud, or threats to public health. Consumers deserve no less.

We would appreciate a response to our concerns about this matter. Please respond to Wenonah Hauter at Public Citizen, (202) 454-5132, 215 Pennsylvania Ave. SE, Washington DC 20003.

Sincerely,

American Corn Growers Association

Cancer Prevention Coalition

Center for Food Safety

Community Nutrition Institute

Consumer Federation of America

Consumer Policy Institute/Consumers Union

Creutzfeldt-Jakob Disease Foundation, Inc.

Family Farm Defenders

Government Accountability Project

Global Resource Action Center for the Environment

Institute for Agriculture and Trade Policy

Iowa Farmers Union

Lane County Food Coalition

Organic Consumers Association

Organization for Competitive Markets

Public Citizen

Safe Tables Our Priority

The Humane Society of the United States

Weston A. Price Foundation

[1] For example, agency representatives have been quoted repeatedly as saying "Public Health Veterinarians, who are assigned to every slaughter plant in America, perform ante mortem and postmortem inspection on every animal." This is false. Most often, especially in the largest plants, veterinarians do ante mortem and postmortem inspection only on those animals which are segregated for veterinarian disposition by FSIS inspectors.